

SPECIAL COVENANTS
OF
SKYLAND - THIRD FILING

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March 7, 2000

SPECIAL COVENANTS

OF

SKYLAND-THIRD FILING

THESE SPECIAL COVENANTS OF SKYLAND-THIRD FILING are executed the 7th day of March, 2000, by N D Enterprises L.L.C., a Colorado limited liability company, hereafter termed "Declarant".

ARTICLE 1

STATEMENT OF PURPOSE OF DECLARATION

Section 1.1 Ownership of Property. Declarant is the owner of the real property ("Property") situate in Gunnison County, Colorado described as follows:

Skyland-Third Filing according to the Plat thereof, filed March 24th, 2000 at Reception No. 500522 of the records of Gunnison County, Colorado.

Section 1.2 Declaration of Special Covenants. Declarant hereby makes, declares and establishes the following covenants, restrictions and easements which shall affect the Property. These Special Covenants shall run with the Property and shall be binding upon all persons and entities having any right, title or interest in and to the Property or any lot, tract, unit or parcel thereof, their heirs, successors and assigns and their employees, guests and invitees and shall inure to and be for the benefit of a lot or unit within the Property.

Section 1.3 Statement of Purpose. These Special Covenants are imposed for the benefit of all Owners and future owners of lots, tracts, units and parcels located within the Property and to provide for the preservation of values of the Property and to preserve the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of the Property.

Section 1.4 Protective Covenants of Skyland. These Special Covenants are in addition to the Declaration of Protective Covenants Skyland, Initial Filing, recorded November 17, 1981 in Book 574 at page 141; the Notice of Amendment of Declaration of Protective Covenants recorded in Book 789 at page 710, the Amendment to Declaration of Protective Covenants recorded at Reception No. 473133, the Certification recorded in Book 576 at page 164 and the Supplemental Certification recorded in Book 595 at page 76, all of the records of Gunnison County, Colorado. At all times the Property shall be subject to and controlled by the Declaration of Protective

Covenants Skyland, Initial Filing, the Supplement, and the Amendments and nothing contained herein shall be construed to limit the applicability and enforceability of the same as to the Property.

ARTICLE 2 DEFINITIONS

The following terms and words shall have the following definitions:

Section 2.1 "Association" shall mean the Skyland Community Association, a Colorado nonprofit corporation, or any successor thereof charged with the duties and obligations set forth herein.

Section 2.2 "Association Documents" shall mean these Special Covenants, the Protective Covenants of Skyland as set forth in Section 1.4 above, the Design Guidelines adopted by the Association, the Articles of Incorporation and Bylaws of the Association, together with any amendments thereto, and any rules, regulations or policies adopted by the Association.

Section 2.3 "Board of Directors" or "Board" shall mean the Board of Directors of the Association duly elected and acting according to the Articles of Incorporation and Bylaws of the Association. The Board of Directors is also defined as an Executive Board by the Colorado Common Interest Ownership Act.

Section 2.4 "Building" shall mean any structure having a roof supported by columns or walls, or any similar type of Improvement situate and located within the Property.

Section 2.5 "Building Site" or "Building Envelope" shall mean the site, envelope or area within a Lot where Buildings shall be located and as set forth on the Plat of Skyland-Third Filing.

Section 2.6 "Declarant" shall mean ND Enterprises L.L.C., a Colorado limited liability company, its successors and assigns.

Section 2.7 "Improvement" shall mean all buildings, structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, recreational facilities, signs, decks, enclosures, changes in exterior color or shape, excavation, and all other site work including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior Improvement constructed or completed on the Property.

Section 2.8 **"Landscaping"** shall mean planted areas and plant materials, including trees, shrubs, lawns, flower beds and ground cover.

Section 2.9 **"Lot"** shall mean any lot, tract or parcel of land in Skyland-Third Filing.

Section 2.10 **"Member"** shall mean any person holding membership in the Association.

Section 2.11 **"Owner"** shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot or Unit; provided, however, that prior to the first conveyance of any Lot or Unit for value after this Declaration, the Owner shall mean the Declarant unless the Declarant has designated its successor in ownership of fee simple title to exercise the rights, duties and obligations of ownership.

Section 2.12 **"Plat"** shall mean the Plat of Skyland-Third Filing, Phase 1, as filed in the records of Gunnison County, Colorado, and as the same may be amended, enlarged or revised from time to time and affecting the Property.

Section 2.13 **"Property"** shall mean and include all of the property subject to this Declaration.

Section 2.14 **"Special Covenants"** or **"Special Covenants of Skyland-Third Filing"** shall mean these Special Covenants of Skyland-Third Filing and as the same may hereafter be amended, modified or extended.

ARTICLE 3 NOXIOUS WEED CONTROL

Section 3.1 **Weed Management Plan**. The Association has adopted a Weed Management Plan Skyland Community Association in accordance with Gunnison County Board of Commissioners Resolution Series 1998 No. 13 "A Resolution Adopting a Policy Requiring the Implementation of Earthmoving Site Revegetation and Noxious Weed Control Plans for Development and Land Use Changes." All Owners of Property within Skyland-Third Filing shall at all times comply with the provisions of the Weed Management Plan and be responsible to remove all listed noxious weeds in accordance with the Weed Management Plan.

Section 3.2 **Noxious Weeds**. All Landscaping of any Lot within Skyland-Third Filing, including road cutting, construction, homesite clearing and berm construction must be accomplished by using certified noxious weed free seed or live vegetation that is not listed on the State of Colorado or the County of Gunnison Noxious

Weed List. In addition, any mulch used in connection with Landscaping other than hydro mulch must be certified free of noxious weeds.

ARTICLE 4 GEOTECHNICAL REPORTS

Section 4.1 Site Specific Engineering. As a condition of approval for the construction or erection of any building within Skyland-Third Filing, the applicants shall submit to the Association a detailed site specific geotechnical investigation by a qualified professional engineer as to the structural design and foundation of any such building.

ARTICLE 5 ISSUANCE OF BUILDING PERMITS

Section 5.1 Building Permits. Any building permit issued by Gunnison County, Colorado may include costs imposed by Gunnison County, Colorado reflecting the pro rata share of all Lots, tracts and parcels of land within Skyland-Third Filing of any improvements to the Brush Creek Road.

ARTICLE 6 UPPER LOOP TRAIL

The Upper Loop Trail as set forth on the Plat shall be initially constructed by the Declarant. Upon completion of the construction, the Upper Loop Trail shall be maintained by and improved by the Skyland Metropolitan District with such maintenance and improvements funded by taxes and assessments of the Skyland Metropolitan District levied against all property within the jurisdiction of the Skyland Metropolitan District.

ARTICLE 7 ENFORCEMENT OF COVENANTS

Section 7.1 Violations Deemed a Nuisance. Every violation of these Special Covenants shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

Section 7.2 Failure to Comply. The failure to comply with these Special Covenants shall be grounds for an action to recover damages, or for injunctive relief or for specific performance, or any of them under the following terms and conditions:

7.2.1 Written notice of any violation or failure to comply with these Special Covenants shall first be given to any Member or person as to such violation or failure to comply.

7.2.2 Such Member or person shall be given 10 days from the date of such notice to correct such violation or failure to comply.

7.2.3 In the event that any Member or person believes that he or she is not in violation or failure to comply, he or she may request an opportunity for a hearing by the Board of Directors prior to the Association taking further action or commencing any legal proceeding against such Member or person.

7.2.4 Any action by the Association as against any such Member or person shall be by resolution of the Board of Directors following notice as above provided and granting to such Member or person an opportunity to be heard before the Board of Directors.

Section 7.3 Who May Enforce. Any action to enforce any violation of any provision of these Special Covenants may be brought as follows:

7.3.1 By the Association in the name of the Association and on behalf of the Owners.

7.3.2 By the Owner of any Lot or Unit.

Section 7.4 No Waiver. The failure of the Board, the Association, an Owner, Gunnison County, Colorado, or any other legal entity which is entitled to enforce compliance with these Special Covenants to enforce or obtain compliance as to any violation, shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

Section 7.5 Right of Gunnison County, Colorado. The Board of County Commissioners of Gunnison County, Colorado is specifically granted the right to enforce these Special Covenants and to bring any action as may be required for the violation of these Special Covenants as may be required to protect Gunnison County, Colorado or its residents. Gunnison County, Colorado may enforce these Special Covenants at its sole discretion, without assumption of any liability whether or not such enforcement is exercised, and without obligation to exercise such enforcement in any circumstance. The ability of Gunnison County, Colorado to enforce this Declaration is non-exclusive and does not preclude any other authorized party from enforcing the same.



ARTICLE 8 DURATION OF COVENANTS

Section 8.1 Term. The term of these Special Covenants, and any amendments or supplements thereto, shall be from the date of recording in the records of Gunnison County, Colorado and until January 1, 2050. Thereafter, these Special Covenants shall be automatically renewed for successive periods of ten years each, unless otherwise terminated or amended as hereafter provided.

Section 8.2 Amendment. These Special Covenants, or any provision hereof, may only be terminated, extended, modified or amended as to the Property subject to the Special Covenants, or any portion thereof, upon the written consent by the Owners of 75% or more of the Lots and Units in Skyland-Third Filing and by the Board of Directors of the Skyland Community Association. Provided, however, that any amendments as to Article 3 and Article 4 of these Special Covenants may only be amended with the written consent and approval of the Board of County Commissioners of Gunnison County, Colorado. Any such amendment shall be by an instrument duly executed, acknowledged and recorded in the records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Lots or Units within Skyland-Third Filing.

Section 8.3 Amendment by Declarant. Notwithstanding the provisions of Section 8.2, the Declarant reserves the sole right and power to modify and amend these Special Covenants, and all plats subject to these Special Covenants, by executing and recording such amendment in the records of Gunnison County, Colorado. Such right or power of the Declarant is limited to (1) the correction of any typographical or language errors in these Special Covenants and/or the plats, (2) any corrections required to comply with the applicable laws, rules and regulations of any governmental entity having jurisdiction over the Property, and (3) any changes or corrections required to reasonably satisfy the requirements of any commercial lender to provide financing for the purchase and/or construction of a residence upon any Lot or Unit, which are not contrary to the terms of the agreement. This right and power of the Declarant to modify or amend these Special Covenants and the plats, in whole or in part, as set forth in this Section 8.3, shall be effective only until (1) five years after the date of construction of the first Improvements on the Property or (2) the date that 75% of all Lots and Units within the Property have been sold or conveyed to third person owners by the Declarant, whichever occurs first. Provided, however, the Declarant may not amend or revise the location and dimensions of any Lot or Unit which has been conveyed by Declarant to another Owner, without the consent of such Owner.

**ARTICLE 9
PRINCIPLES OF INTERPRETATION**

Section 9.1 Severability. These Special Covenants, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of these Special Covenants are determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

Section 9.2 Construction. In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 9.3 Headings. The headings on any section or article are included only for purposes of convenient reference and shall not affect the meaning or interpretation of these Special Covenants.

Section 9.4 Written Notice. All notices required under these Special Covenants shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery or five days after mailing by certified or registered mail, return receipt required, to the latest address of such Owner on file in the record of the Association at the time of such mailing.

Section 9.5 Limitation of Liability. Neither the Association, or any officer or director thereof, shall be liable to any party for any action or for any failure to take any action with respect to any matter arising by, through or under these Special Covenants if the action or failure to act was made in good faith. The Association shall indemnify all officers and directors with respect to any action taken in their official capacity as provided in the Articles of Incorporation and Bylaws of the Association.

Section 9.6 Attorneys' Fees. If any legal action is commenced or maintained in court, whether in law or in equity, as to the interpretation, enforcement, construction or the determination of the rights and duties of the parties to these Special Covenants or any provision of the Association Documents provided herein, the prevailing party in any such action shall be entitled to reasonable attorneys' fees together with all reasonable costs and expenses incurred in such action.

Section 9.7 Applicable Law. The proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of these Special Covenants shall be the District Court of Gunnison County, Colorado, unless otherwise chosen by the

Association and shall be interpreted, construed and governed by the laws of the State of Colorado.

Section 9.8 Interest. Unless otherwise provided in these Special Covenants, any sums, amounts or monies due and owing to the Association under the Association Documents shall bear interest at 18% per year from the date due until paid.

IN WITNESS WHEREOF, the Declarant has executed these Special Covenants the day and year first above written.

N D ENTERPRISES L.L.C.,
a Colorado limited liability company

By: Louis F. Costello
Louis F. Costello,
Assistant General Manager

STATE OF COLORADO)
) ss.
County of Gunnison)

7th The above and foregoing Special Covenants was acknowledged before me this day of March, 2000 by Louis F. Costello as Assistant General Manager of N D Enterprises L.L.C., a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: 1-5-2003



Debra Johnson
Notary Public